



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET
STATE PLANNING COORDINATION

April 15, 2008

Parley Hess
McBride & Ziegler, Inc.
2607 Eastburn Center
Newark, DE 19711

RE: PLUS review – 2008-03-07; Deemer's Landing

Dear Mr. Hess:

Thank you for meeting with State agency planners on March 26, 2008 to discuss the proposed plans for the Deemer's Landing project to be located on West Ninth Street in the City of New Castle.

According to the information received, you are seeking site plan approval through the City for a 78 unit apartment complex totaling 124,800 sq. ft.

Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting. The developers will also need to comply with any Federal, State and local regulations regarding this property. We also note that as the City of New Castle is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the City.

Executive Summary

The following section includes some site specific highlights from the agency comments found in this letter. This summary is provided for your convenience and reference. The full text of this letter represents the official state response to this project. ***Our office notes that the applicants are responsible for reading and responding to this letter and all comments contained within it in their entirety.***

State Strategies/Project Location

The project is located in Investment Level 1 according to the 2004 State Strategies for Policies and Spending. Investment Level 1 reflects areas where growth is anticipated by local, county, and State plans in the near term future. State investments will support growth in these areas. Our office has no objections to this project.

Street Design and Transportation

- DelDOT recommends that the developer provide a bicycle and pedestrian connection to Washington Avenue using their frontage there.
- DelDOT would recommend that the City consider requiring the completion of a traffic impact study (TIS) and the addition of notes to the record plan requiring the developer to make or participate in any needed improvements prior the approval of the record plan.
- Regardless of whether they require a TIS, DelDOT recommends that the City require the developer to improve 9th Street to meet City standards from Washington Street to Young Street.

Natural and Cultural Resources

- According to the Statewide Wetland Mapping Project (SWMP) mapping, palustrine wetlands were mapped on subject parcel. In recognition of the need to protect water quality, the Watershed Assessment Section recommends that the applicant maintain/establish a minimum 100-foot upland buffer (planted in native vegetation) from the landward edge of all wetlands and water bodies (including all ditches).
- Because of the parcel's location in an impaired watershed and the amount of impervious surface, green technology BMPs and low impact development practices should be considered a priority to reduce stormwater flow and to meet water quality goals.
- DNREC would recommend a Conditional Letter of Map Amendment based on fill (CLOMR-F) be submitted to FEMA if one has not already been submitted. This will certify the fill being placed on the site will elevate the structure above the 1% annual chance flood elevation.

The following are a complete list of comments received by State agencies:

Office of State Planning Coordination – Contact: Herb Inden 739-3090

The project is located in Investment Level 1 according to the 2004 State Strategies for Policies and Spending. Investment Level 1 reflects areas where growth is anticipated by local, county, and State plans in the near term future. State investments will support growth in these areas. Our office has no objections to this project.

State Historic Preservation Office (SHPO) – Contact: Terrence Burns 739-5685

No comments received.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

- 1) Because this development would be accessed entirely by way of a City street, it would be outside DelDOT's jurisdiction as presently proposed. DelDOT recommends that the developer provide a bicycle and pedestrian connection to Washington Avenue using their frontage there. Such a connection would require coordination with their Canal District Office to the extent that work would be done in the right-of-way, but otherwise would not require further coordination with the Department. An initial contact in the Canal District Office would be the Public Works Engineer there, Mr. Gerard Mulderrig. Mr. Mulderrig may be reached at (302) 326-4694.
- 2) DelDOT would recommend that the City consider requiring the completion of a traffic impact study (TIS) and the addition of notes to the record plan requiring the developer to make or participate in any needed improvements prior the approval of the record plan. The proposed development would meet DelDOT's volume warrants for a TIS if it were accessing a State-maintained street. If the City does require a TIS, DelDOT would be willing to assist with the scoping and review of it because there could be impacts on the State-maintained streets in the City. As necessary, the City may contact Mr. Troy Brestel of the DelDOT Planning Office in this regard. Mr. Brestel may be reached at (302) 760-2 167.
- 3) Regardless of whether they require a TIS, DelDOT recommends that the City require the developer to improve 9th Street to meet City standards from Washington Street to Young Street. From aerial photography, this appears to be primarily a matter of adding sidewalk along the property frontage and possibly from there east to Young Street.

**The Department of Natural Resources and Environmental Control – Contact:
Kevin Coyle 739-9071**

Soils

According to the New Castle County soil survey mapping, Aldino-Keyport-Mattapex-Urban Land complex and Othello-Fallsington -Urban Land complex were mapped in the immediate vicinity of the proposed construction. Aldino-Keyport-Mattapex-Urban Land complex is a moderately well-drained soil that has been extensively altered through filling and grading practices. Othello-Fallsington-Urban Land complex is a poorly-drained wetland associated (hydric) soil that has been extensively altered through filling and grading practices.

Wetlands

According to the Statewide Wetland Mapping Project (SWMP) mapping, palustrine wetlands were mapped on subject parcel.

The applicant is responsible for determining whether any State-regulated wetlands (regulated pursuant to 7 Del.C. Chapter 66 and the Wetlands Regulations) are present on the property. This determination can only be made by contacting the Division of Water Resources' Wetlands and Subaqueous Lands Section at 302/739-9943 and consulting the State's official wetland regulatory maps, which depict the extent of State jurisdiction. The area regulated by State law may be very different from the area under federal authority. No activity may take place in State-regulated wetlands without a permit from DNREC's Wetlands Section.

In addition, most perennial streams and ditches and many intermittent streams and ditches are regulated pursuant to the Subaqueous Lands Act (7 Del.C. Chapter 72) and the Regulations Governing the Use of Subaqueous Lands. Ponds which are connected to other waters are also regulated, while isolated ponds are not. Any work in regulated streams, ditches or ponds requires a permit from the Wetlands and Subaqueous Lands Section. An on-site jurisdictional determination is recommended in order to determine whether any regulated watercourses exist on the property. Contact the Wetlands and Subaqueous Lands Section at 302/739-9943 to schedule an on-site visit. Such appointments can usually be scheduled within 2 to 3 weeks.

The applicant should also be reminded that they must avoid construction/filling activities in those areas containing wetlands or wetland associated hydric soils as they are subject to regulatory jurisdiction under Section 404 provisions of the Clean Water Act. A site-specific field wetlands delineation using the methodology described in the 1987 United States Army Corps of Engineers (USACE, or "the Corps") manual is the only acceptable basis for making a jurisdictional wetland determination for nontidal wetlands in Delaware. The applicant is forewarned that the Corps views the use of the National

Wetlands Inventory (NWI) mapping or the Statewide Wetlands Mapping Project (SWMP) mapping as an unacceptable substitute for a field-based jurisdictional wetland delineation (i.e., 1987 USACE manual).

To ensure compliance with said Corps regulatory requirements, it is strongly recommended that a field wetlands delineation using the above-referenced methodology be performed on this parcel before commencing any construction activities. It is further recommended that the Corps be given the opportunity to officially approve the completed delineation. In circumstances where the applicant or applicant's consultant delineates what they believe are nonjurisdictional isolated (SWANCC) wetlands, the Corps must be contacted to evaluate and assess the jurisdictional validity of such a delineation. The final jurisdictional authority for making isolated wetlands determinations rests with the Corps; they can be reached by phone at 736-9763.

Impacts to Palustrine wetlands are regulated by the Corps through Section 404 of the Clean Water Act. In addition, individual 404 permits and certain Nationwide Permits from the Corps also require 401 Water Quality Certification from the DNREC Wetland and Subaqueous Land Section and Coastal Zone Federal Consistency Certification from the DNREC Division of Soil and Water Conservation, Delaware Coastal Management Program (DCMP) Section. Each of these certifications represents a separate permitting process. Please be advised that Nationwide permits have been suspended in Delaware and are pending further coordination with the Corps. Therefore, contrary to past practices, Coastal Zone Management approval can no longer be assumed. Individual certifications must be granted from the DCMP office for each project intending to utilize a Nationwide Permit. For more information on the Federal Consistency process, please contact the DCMP office at 302.739.9283. To find out more about permitting requirements, the applicant is encouraged to attend a Joint Permit Process Meeting. These meetings are held monthly and are attended by federal and state resource agencies responsible for wetland permitting. Contact Denise Rawding at (302) 739-9943 to schedule a meeting.

Based on a review of existing buffer research by Castelle et al. (Castelle, A. J., A. W. Johnson and C. Conolly. 1994. *Wetland and Stream Buffer Requirements – A Review*. J. Environ. Qual. 23: 878-882), an adequately-sized buffer that effectively protects wetlands and streams, in most circumstances, is about 100 feet in width. In recognition of this research and the need to protect water quality, the Watershed Assessment Section recommends that the applicant maintain/establish a minimum 100-foot upland buffer (planted in native vegetation) from the landward edge of all wetlands and water bodies (including all ditches).

Impervious Cover

The applicant estimates this project's post-construction surface imperviousness to reach about 42 percent. However, given the scope and density of this project (i.e., as viewed from the conceptual project layout) this estimate appears to be a significant underestimate. When calculating surface imperviousness, it is important to include all

forms of constructed surface imperviousness (i.e., rooftops, sidewalks, open-water stormwater management ponds, and roads) in the calculation for surface imperviousness; this will ensure a realistic assessment of this project's likely post-construction environmental impacts. Therefore, surface imperviousness should be recalculated with all of the above-mentioned forms of constructed surface imperviousness included. Failure to do so will significantly understate this project's true environmental impacts.

Studies have shown a strong relationship between increases in impervious cover to decreases in a watershed's overall water quality. It is strongly recommended that the applicant implement best management practices (BMPs) that reduce or mitigate some of its most likely adverse impacts. Reducing the amount of surface imperviousness through the use of pervious paving materials ("pervious pavers") in lieu of asphalt or concrete in conjunction with an increase in forest cover preservation or additional tree plantings are some examples of practical BMPs that could easily be implemented to help reduce surface imperviousness.

TMDLs

A Total Maximum Daily Load (TMDL) is the maximum level of pollution for which a water quality limited water body can assimilate without compromising use and recreational goals such as swimming, fishing, drinking water, and shell fish harvesting. Although TMDL development has not been scheduled for this watershed to date, it is still recommended that the applicant employ best available technologies (BATs) and/or best management practices (BMPs) as "methodological mitigative strategies" to reduce degradative impacts that might be associated with this project.

Reducing imperviousness, planting/preservation of trees and maintaining 100-foot minimum upland buffers from wetlands and streams are some examples of proactive mitigative strategies that will help reduce excessive nutrient runoff from this development and its impacts on water quality, while ensuring State compliance with potential Federal TMDL regulatory requirements.

Water Supply

The project information sheets state that public water will be provided to the project by MSC (City of New Castle) via a public water system. DNREC records indicate that the project is located within the public water service area granted to NCC Water & Light Company under Certificate of Public Convenience and Necessity (CPCN) 88-WS-05. It is recommended that the developer contact NCC Water & Light Company to determine the availability of public water. Any public water utility providing water to the site must obtain a CPCN from the Public Service Commission. Information on CPCNs and the application process can be obtained by contacting the Public Service Commission at 302-739-4247. Should an on-site Public/Miscellaneous Public well be needed, a minimum isolation distance of 150 feet is required between the well and any potential source of contamination, such as a septic tank and sewage disposal area, and it must also be located at least 150 feet from the outermost boundaries of the project. The Division of Water Resources will consider applications for the construction of on-site wells provided the

wells can be constructed and located in compliance with all requirements of the Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing any wells.

Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation.

All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.

Potential Contamination Sources exist in the area, and any well permit applications will undergo a detailed review that may increase turnaround time and may require site specific conditions/recommendations. In this case there is a landfill associated with Deemer Steel 1 & 2; Underground Storage Tanks associated with Auto Collision Service and the Deemer Steel Casting Company; and a Superfund site associated with Deemer Steel-Ninth & Washington VCP, located within 1000 feet of the proposed project.

Should you have any questions concerning these comments, please contact Rick Rios at 302-739-9944.

Sediment and Erosion Control/Stormwater Management

A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. Contact the reviewing agency to schedule a preliminary application meeting to discuss the sediment and erosion control and stormwater management components of the plan as soon as practicable. The site topography, soils mapping, pre- and post-development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion. The plan review and approval as well as construction inspection will be coordinated through the New Castle Conservation District. Contact the New Castle Conservation District at (302) 832-3100, Ext. 3 for details regarding submittal requirements and fees.

Because of the parcel's location in an impaired watershed and the amount of impervious surface, green technology BMPs and low impact development practices should be considered a priority to reduce stormwater flow and to meet water quality goals.

The Sediment and Stormwater Management Program ensures sediment and erosion control plans and stormwater plans comply with local land use ordinances and policies, including the siting of stormwater management facilities. However, they do not support placement in resource protection areas or the removal of trees for the sole purpose of placement of a stormwater management facility/practice.

Floodplains

DNREC would recommend a Conditional Letter of Map Amendment based on fill (CLOMR-F) be submitted to FEMA if one has not already been submitted. This will certify the fill being placed on the site will elevate the structure above the 1% annual chance flood elevation. Another reason for going through the CLOMR-F process is to make sure the culvert under the railroad tracks can handle the flow from this parcel. The City of New Castle has a one foot of Freeboard requirement that would require the first floor to be 1 foot above the 1% annual chance flood elevation. We would also like to see that measures be taken so that no adverse flooding impacts downstream of this parcel occur.

Underground Storage Tanks

There are two inactive LUST site(s) located near the proposed project:

Deemers Steel, Facility # 3-001557, Project # N9504086

Auto Collision Services, Facility # 3-001343, Project # N9504083

No environmental impact is expected from the above inactive/active LUST site(s). However, should any underground storage tank or petroleum contaminated soil be discovered during construction, the Tank Management Branch must be notified as soon as possible. It is not anticipated that construction specifications would need to be changed due to petroleum contamination. However, should any unanticipated contamination be encountered and PVC pipe is being utilized, it will need to be changed to ductile steel with nitrile rubber gaskets in the contaminated areas.

Site Investigation & Restoration

The Site Investigation & Restoration Branch (SIRB) identified five sites located within a half mile radius of the proposed project: the New Castle Gas Company (DE-0167), Dobbinsville Park (DE-1150), Abex Corp (Amsco) Landfill (DE-0065), Bellanca Hangar Site (DE-1061) and Deemer Steel (DE-1087). Based on the review of the available data, SIRB foresees no negative impact to the proposed project, Deemers Landing. Should a release or imminent threat of a release of hazardous substances be discovered during the course of development (e.g., contaminated water or soil), construction activities should be discontinued immediately. Also, DNREC should be notified immediately at the 24-hour emergency number (800-662-8802). In addition, SIRB should be contacted as soon as possible at 302-395-2600 for further instructions.

Although DNREC-SIRB does not anticipate an impact to the proposed project based on review of the information currently available, in general, DNREC-SIRB recommends that a Phase I Environmental Site Assessment be performed for urban properties with former commercial or industrial use.

Air Quality

Once complete, vehicle emissions associated with this project are estimated to be 6.0 tons (11,972.2 pounds) per year of VOC (volatile organic compounds), 5.0 tons (9,912.2 pounds) per year of NO_x (nitrogen oxides), 3.7 tons (7,313.4 pounds) per year of SO₂ (sulfur dioxide), 0.3 ton (651.0 pounds) per year of fine particulates and 500.7 tons (1,001,458.1 pounds) per year of CO₂ (carbon dioxide).

Emissions from area sources associated with this project are estimated to be 2.4 tons (4,828.9 pounds) per year of VOC (volatile organic compounds), 0.3 ton (531.3 pounds) per year of NO_x (nitrogen oxides), 0.2 ton (440.9 pounds) per year of SO₂ (sulfur dioxide), 0.3 ton (569.0 pounds) per year of fine particulates and 9.8 tons (19,575.4 pounds) per year of CO₂ (carbon dioxide).

Emissions from electrical power generation associated with this project are estimated to be 1.0 tons (1,913.8 pounds) per year of NO_x (nitrogen oxides), 3.3 tons (6,656.8 pounds) per year of SO₂ (sulfur dioxide) and 786.8 tons (981,882.7 pounds) per year of CO₂ (carbon dioxide).

	VOC	NO _x	SO ₂	PM _{2.5}	CO ₂
Mobile	6.0	5.0	3.7	0.3	500.7
Residential	2.4	0.3	0.2	0.3	9.8
Electrical Power		1.0	3.3		786.8
TOTAL	8.4	6.3	7.2	0.6	1297.3

For this project the electrical usage via electric power plant generation alone totaled to produce an additional 1.5 tons of nitrogen oxides per year and 5.3 tons of sulfur dioxide per year.

A significant method to mitigate this impact would be to require the builder to construct Energy Star qualified homes. Every percentage of increased energy efficiency translates into a percent reduction in pollution. Quoting from their webpage, <http://www.energystar.gov/>:

“ENERGY STAR qualified homes are independently verified to be at least 30% more energy efficient than homes built to the 1993 national Model Energy Code or 15% more efficient than state energy code, whichever is more rigorous. These savings are based on heating, cooling, and hot water energy use and are typically achieved through a combination of:

- building envelope upgrades,
- high performance windows,
- controlled air infiltration,
- upgraded heating and air conditioning systems,

tight duct systems and
upgraded water-heating equipment.”

The DNREC Energy Office is in the process of training builders in making their structures more energy efficient. The Energy Star Program is excellent way to save on energy costs and reduces air pollution. They highly recommend this project development and other residential proposals increase the energy efficiency of their homes.

They also recommend that the home builders offer geothermal and photo voltaic energy options. Applicable vehicles should use retrofitted diesel engines during construction. The development should provide tie-ins to the nearest bike paths, links to mass transit, and fund a lawnmower exchange program for their new occupants.

State Fire Marshal’s Office – Contact: Duane Fox 856-5298

This location/parcel, being situated within the city limits of New Castle, the Office of the State Fire Marshal defers to the City Fire Marshal for comments.

Department of Agriculture - Contact: Scott Blaier 739-4811

The Delaware Department of Agriculture has no objections to the proposed project. It is located within the City of New Castle, and the *Strategies for State Policies and Spending* encourages environmentally responsible development in Investment Level 1 areas.

Right Tree for the Right Place

The Delaware Department of Agriculture Forest Service encourages the developer to use the “Right Tree for the Right Place” for any design considerations. This concept allows for the proper placement of trees to increase property values in upwards of 25% of appraised value and will reduce heating and cooling costs on average by 20 to 35 dollars per month. In addition, a landscape design that encompasses this approach will avoid future maintenance cost to the property owner and ensure a lasting forest resource. To further support this concept the Delaware Forest Service does not recommend the planting of the following species due to the high risk of mortality from insects and disease:

Callery Pear
Leyland Cypress

Ash Trees
Red Oak (except for Willow Oak)

If you would like to learn more about the potential problems or impacts associated with these trees, please contact the Delaware Forest Service for more information at (302) 698-4500.

Native Landscapes

The Delaware Department of Agriculture and the Delaware Forest Service encourages the developer to use native trees and shrubs to buffer the property from the adjacent land-use activities near this site. A properly designed forested buffer can create wildlife habitat corridors and improve air quality to the area by removing six to eight tons of carbon dioxide annually and will clean our rivers and creeks of storm-water run-off pollutants. To learn more about acceptable native trees and how to avoid plants considered invasive to our local landscapes, please contact the Delaware Department of Agriculture Plant Industry Section at (302) 698-4500.

Public Service Commission - Contact: Andrea Maucher 739-4247

Any expansion of natural gas or installation of a closed propane system must fall within Pipeline Safety guidelines. Contact: Malak Michael at (302) 739-4247.

Delaware Division of Public Health- Health Promotion Bureau- contact Michelle Eichinger (302) 744-1011

This proposed development is in a Level 1 area. Developing in such an area is consistent with the *Strategies for State Policies and Spending*. DPH is committed to the *Strategies* and therefore, does support development in the proposed area.

DPH supports new development in and around existing towns and municipalities where compact and mixed land use patterns facilitate physical activity.

Delaware State Housing Authority – Contact Vicki Powers 739-4263

This proposal is for a site plan review of a 78-unit apartment complex on 4.3 acres, located on Ninth Street within the City of New Castle. According to the *State Strategies Map*, the proposal is located in an Investment Level 1 area. As a general planning practice, DSHA encourages residential development in areas where residents will have proximity to services, markets, and employment opportunities such as Investment Level 1 and 2 areas outlined in the State Strategies Map. In addition, DSHA strongly supports the development of rental communities. They can be the most economical to construct and are needed to meet the needs of low- and moderate-income families. DSHA's most recent Statewide Housing Needs Assessment has identified a need for the construction of an additional 1,489 rental units over the 2008 to 2012 time period.

While it is unclear at this time what income level this rental community will be serving, it would be beneficial if some of the units were set aside for low- and moderate-income families.

Department of Education – Contact: John Marinucci 735-4055

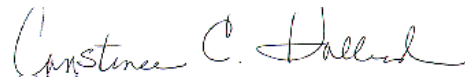
This proposed development is within the Colonial School District.

1. Using the DOE standard formula, this development will generate an estimated 39 students.
2. This project will be subject to the School Capacity Certification process pursuant to 22 Del .C. § 842.

Following receipt of this letter and upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.

Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in cursive script, reading "Constance C. Holland".

Constance C. Holland, AICP
Director

CC: City of New Castle